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NO. 88-1965

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

PATRICIA THOMPSON
EDDIE THOMPSON, JR.

Petitioners

vs.

CITY OF COVINGTON, THOMAS EPPERSON, TODD FINAN, HENRY WARDEN, JOSEPH CONDIT, JOHN ELFERS, DOUGLAS STEPHENS, PEOPLES LIBERTY BANK, RICHARD NELSON, RALPH HAILE, AND UNNAMED PERSONS

Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI ON BEHALF OF CITY OF COVINGTON, KENTUCKY, THOMAS EPPERSON, TODD FINAN, AND HENRY WARDEN

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STATEMENT OF THE CASE

Eddie Thompson and Patricia Thompson filed a civil action in the Kenton Circuit Court, Covington, Kentucky on September 12, 1986 alleging a variety of tortious acts committed against them by individual police officers of the City of Covington and acts of discrimination and torts committed by the City of Covington. The alleged acts were stated in the

complaint to have occurred between 1965 and 1978. (Petitioner's Appendix, pp. 5a-17a).

The defendants, City of Covington, Thomas Epperson, Todd Finan, and Henry Warden, filed a motion to dismiss on the grounds that the relief sought in the complaint was barred by the applicable statutes of limitation. On April 23, 1987, the trial court, Hon. J. Arnold sitting as a special judge, dismissed the complaint against the police officers and the City of Covington ruling K.R.S. 413.140 and K.R.S. 413.120, the applicable statutes of limitation, barred the complaint. (Petitioner's Appendix, pp. 22a-25a). On August 19, 1988 the Kentucky Court of Appeals affirmed the decision and the Supreme Court of Kentucky denied discretionary review on March 8, 1989. (Petitioner's Appendix, pp. 29a-33a).

SUMMARY OF ARGUMENT

The Kentucky trial and appellate courts correctly applied the applicable statutes of limitation ruling that K.R.S. 413.140 and K.R.S. 413.120 barred the cause of action pled by the plaintiffs. This issue is not one which the Supreme Court should grant a review on certiorari under Rule 17. It is not even a federal question.

ARGUMENT

The Kentucky trial and appellate courts carefully scrutinized the complaint against the City of Covington, and Officers Epperson, Finan, and Warden. All of the actions were alleged to have occurred more than five (5) years prior to the filing of the action. Therefore all of the assertions complained of were subject to the limitations of actions contained in K.R.S. 413.140 and K.R.S. 413.120. (Appendix, pp. 1a-3a).

The Supreme Court should also be aware that Thompson's assertions of fact and causes of action have already been ex-

tensively litigated and the claims of excessive use of force against the police officers were tried by a jury. All of Thompson's causes of action were dismissed. U.S. District Court, Eastern District of Kentucky, Civil Action, 78-57 and 79-40; affirmed by the Sixth Circuit Court of Appeals 81-5784 and 5785, cert. denied by U.S. Supreme Court, 82-2122.

CONCLUSION

This is a frivolous petition. The petition for review on certiorari should be denied.

Respectfully submitted,

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APPENDIX

413.120 Actions to be brought within five years

The following actions shall be commenced within five years after the cause of action accrued:

(1) An action upon a contract not in writing, express or implied.

(2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.

(3) An action for a penalty or forfeiture when no time is fixed by the statute prescribing it.

(4) An action for trespass on real or personal property.

(5) An action for the profits of or damages for withholding real or personal property.

(6) An action for the taking, detaining or injuring personal property, including an action for specific recovery.

(7) An action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.

(8) An action upon a bill of exchange, check, draft or order, or any endorsement thereof, or upon a promissory note, placed upon the footing of a bill of exchange.

(9) An action to enforce the liability of a steamboat or other vessel.

(10) An action upon a merchant's account for goods sold and delivered, or any article charged in such store account.

(11) An action upon an account concerning the trade of merchandise, between merchant and merchant or their agents.

(12) An action for relief or damages on the ground of fraud or mistake.

(13) An action to enforce the liability of bail.

(14) An action for personal injuries suffered by any person against the builder of a home or other improvements. This cause of action shall be deemed to accrue at the time of original occupancy of the improvements which the builder caused to be erected.

History: 1964 c 124, § 1, eff. 6-18-64 KS 2515, 2518

413.140 Actions to be brought within one year

(1) The following actions shall be commenced within one (1) year after the cause of action accrued:

(a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice or servant.

(b) An action for injuries to persons, cattle or other livestock by railroads or other corporations, with the exception of hospitals licensed pursuant to KRS Chapter 216.

(c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal conversation or breach of promise of marriage.

(d) An action for libel or slander.

(e) An action against a physician, surgeon, dentist or hospital licensed pursuant to KRS Chapter 216, for negligence or malpractice.

(f) An action for the escape of a prisoner, arrested or imprisoned on civil process.

(g) An action for the recovery of usury paid for the loan or forbearance of money or other thing, against the loaner or forbearer or assignee of either.

(h) An action for the recovery of stolen property, by the owner thereof against any person having the same in his possession.

(i) An action for the recovery of damages or the value of stolen property against the thief or any accessory.

(2) In respect to the action referred to in paragraph (e) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered; provided that such action shall be commenced within five (5) years from the date on which the alleged negligent act or omission is said to have occurred.

(3) In respect to the action referred to in paragraph (g) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of payment. This limitation shall apply to all payments made on all demands, whether evidenced by writing or existing only in parol.

(4) In respect to the action referred to in paragraph (h) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the property is found by its owner.

(5) In respect to the action referred to in paragraph (i) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of discovery of the liability.

History: 1974 H 368, § 98, eff. 6-21-74 1972 S 107; KS 2516, 2517, 2553